

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CELLCO PARTNERSHIP
d/b/a VERIZON WIRELESS

and

Case 28-CA-145221

SARA PARRISH

ORDER REMANDING AND NOTICE TO SHOW CAUSE

On August 29, 2019, the National Labor Relations Board issued a Notice to Show Cause why this case should not be remanded for further consideration under *The Boeing Co.*, 365 NLRB No. 154 (2017).¹ The Board also asked the parties to address whether a remand would affect the Board's ability to resolve the issues implicating *Purple Communications, Inc.*, 361 NLRB 1050 (2014), including whether that portion of the case should be severed and retained or instead included in the remand.² The Respondent filed a response opposing remand, and the Charging Party filed a response

¹ On August 30, 2019, the Board issued a Corrected Notice to Show Cause setting forth the deadline for the filing of responses.

² At that time, the issues before the Board implicating *Purple Communications* were the provisions of Sec. 3.4.1 of the Respondent's 2014 and 2015 Codes of Conduct prohibiting employees from "us[ing] company systems (such as e-mail, instant messaging, the Intranet or Internet) to engage in activities that . . . result in Verizon Wireless' . . . embarrassment" and listing the following as two examples of inappropriate uses of the Respondent's systems: "[U]nauthorized mass distributions" and "Communications primarily directed to a group of employees inside the company on behalf of an outside organization."

Subsequently, on January 30, 2020, the United States Court of Appeals for the Ninth Circuit granted the General Counsel's unopposed motion to remand to the Board the sole remaining allegation that was before the court as to the lawfulness of Sec. 1.6 of the Respondent's 2014 and 2015 Codes of Conduct prohibiting "the use of company resources at any time (emails, fax machines, computers, telephones, etc.) to solicit or distribute," in light of the Board's overruling of *Purple Communications* in *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143 (2019).

favoring remand.³ The Respondent subsequently filed a notice of supplemental authority.

Having duly considered the matter, the Board has concluded that a remand of the allegations involving Sections 1.8 and 2.1.3 and two bullet points in the Conclusion of the Respondent's 2014 and 2015 Codes of Conduct to the administrative law judge is warranted. The Board, however, will sever and retain for future consideration the allegations that Sections 1.6 and 3.4.1 of the Respondent's 2014 and 2015 Codes of Conduct are unlawful and will issue a notice to show cause as to these allegations.

³ The General Counsel did not file a response. The Respondent contends that remand is unwarranted because the General Counsel has already taken the position in other cases involving the same rules that the allegations should be dismissed and that remanding would subject the parties to unnecessary briefing and the Board to unnecessary expenditure of resources in a long-pending matter. The Charging Party favors remand to afford her the opportunity to introduce additional evidence in support of the Board finding the rules unlawful and to show that the Respondent has no business justification for the promulgation and maintenance of the rules at issue or, in the alternative, that it has no business justification that outweighs employees' Sec. 7 rights. Having considered the parties' arguments, we find, as to Secs. 1.8 and 2.1.3 and two bullet points in the Conclusion of the Respondent's 2014 and 2015 Codes of Conduct, that the grounds for remand are not outweighed by the goal of avoiding unnecessary delay. Accordingly, we find that the most prudent course of action is to remand the allegations related to these challenged rules to the judge for consideration in light of *Boeing*.

We shall, however, sever and retain the allegations related to Secs. 1.6 and 3.4.1 of the 2014 and 2015 Codes of Conduct for further consideration and issue a notice to show cause as to these allegations. As noted above, the Board recently overruled *Purple Communications* and announced a new standard that applies retroactively to all pending cases. *Caesars Entertainment*, 368 NLRB No. 143, slip op. at 8-9. In that decision, the Board held, in relevant part, that "an employer does not violate the Act by restricting the nonbusiness use of its IT resources *absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other.*" Id., slip op. at 8 (emphasis added). The parties to this proceeding have not had an opportunity to address whether this exception to the rule of *Caesars Entertainment* applies to the facts of this case. We shall thus issue a notice to show cause why these allegations should not be remanded to the judge for further proceedings in light of *Caesars Entertainment*.

IT IS ORDERED that the complaint allegations involving Sections 1.8 and 2.1.3 and two bullet points in the Conclusion of the Respondent's 2014 and 2015 Codes of Conduct are remanded for the purpose of reopening the record, if necessary, and the preparation of a supplemental decision addressing the complaint allegations affected by *Boeing* and setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order. Because Administrative Law Judge Cracraft has retired, we shall remand these matters to the Chief Administrative Law Judge for assignment. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

IT IS FURTHER ORDERED that the complaint allegations involving Sections 1.6 and 3.4.1 of the Respondent's 2014 and 2015 Codes of Conduct shall be severed and retained.

Further, NOTICE IS GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C., on or before June 1, 2020 (with affidavit of service on the parties to this proceeding), why the complaint allegations involving Sections 1.6 and 3.4.1 of the Respondent's 2014 and 2015 Codes of Conduct should not be remanded to an administrative law judge for further proceedings consistent with the Board's decision in *Caesars Entertainment*, including reopening the record if necessary. Any response should also address whether remand to the judge would be appropriate for further proceedings in light of *Boeing*, including reopening the record if necessary. Any briefs or statements in support of the response shall be filed on the same date.

By direction of the Board: Dated, Washington D.C., May 18, 2020.

Roxanne Rothschild

Executive Secretary